

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SARA MURRAY,

Plaintiff,

v.

KING COUNTY COURT ET AL. ,

Defendants.

CASE NO. 24-cv-00239

ORDER

1. INTRODUCTION

This matter comes before the Court on Plaintiff Sara Murray's Combined Emergency Motion for Reconsideration, Recusal, Injunctive Relief, and to File Documents Under Seal. Dkt. No. 35. For the reasons stated below, the Court GRANTS the motion for reconsideration and DIRECTS the District's Pro Bono Panel Coordinator to try to identify an attorney(s) or law firm from the Pro Bono Panel to represent Murray; DENIES the motion to recuse; DENIES the motion for preliminary injunctive relief; and DENIES without prejudice the motion for permission to file the named report under seal.

2. BACKGROUND

Plaintiff Sara Murray filed this case in the U.S. District Court for the District of Oregon on December 15, 2023. Dkt. No. 1. On the same day, she filed her first motion for appointment of counsel. Dkt. No. 4. In light of the “complex jurisdictional questions” raised by the complaint, the court granted her motion for appointment of counsel “for the limited purpose of advising Murray on: (1) whether to proceed with her case in this court or file her lawsuit elsewhere, and (2) which claims she can plausibly bring in her chosen jurisdiction.” Dkt. No. 12.

With assistance of that court-appointed counsel, Murray moved to transfer her case to the Western District of Washington, asserting that “[v]enue is proper in the Western District of Washington as all relevant events took place, and all relevant defendants are located, in King County, Washington.” Dkt. No. 15. The Oregon district court granted the motion, Dkt. No. 16, and on February 21, 2024, Murray’s case was transferred to this district. Dkt. No. 17. Just after, Murray’s counsel withdrew from the representation, having fulfilled the limited purpose for which she had been appointed. Dkt. No. 20.

After Murray’s case was transferred to this district, Murray was granted leave to proceed in forma pauperis (IFP). Dkt. No. 26. In the order granting IFP status, the Honorable Michelle Peterson, U.S. Magistrate Judge, “recommend[ed] the complaint be reviewed under 28 U.S.C. § 1915(e)(2)(B) before issuance of summons.” Dkt. No. 26 at 1. But on April 8, 2024, before the Court could conduct its Section 1915 review, Murray filed a third amended complaint. Dkt. No. 27.

1 At 276 pages, the third amended complaint—now the operative pleading—is
2 sprawling in scope, asserting a dizzying litany of claims against 37 distinct
3 defendants. *See id.* Despite its immense length, the pleading appears unfinished,
4 terminating mid-sentence on its final page. *Id.* at 276. While it is hard to make out
5 the exact nature of Murray’s claims through the many conclusory and confusing
6 details stated, the gist appears to remain the same as what she pled in her original
7 complaint, which United States Magistrate Judge Jeff Armistead of the District
8 Court of Oregon analyzed as follows:

9 “*First*, she claims that state officials discriminated against her based on
10 her disability and gender, failed to accommodate her disability, and
11 denied her due process during child custody proceedings, in violation of
12 the United States Constitution and the Americans with Disabilities Act.
13 ... *Second*, she alleges that state officials were negligent in their
14 investigation of abuse allegations against her ex-husband. ... *Third*, she
15 alleges that her ex-husband coerced her into signing ownership of her
company over to him and continues to unlawfully exercise control over
her company. ... *Fourth*, she alleges that her ex-husband and others told
lies about her, which ruined her social reputation and led to her losing
control of her business. ... *Finally*, Murray alleges that her ex-husband,
his girlfriend, and his mother, have caused her emotional distress by
harassing her, stalking her, and mistreating her children.

16 Dkt. No. 5 at 1–2 (emphasis in original). Murray brings these claims in her own
17 name and on behalf of her minor children, G.E.M. and C.M.M., over whom she no
18 longer has custody.

19 On April 16, 2024, shortly after Murray’s former attorney withdrew from the
20 representation, Murray moved again for appointment of pro bono counsel on behalf
21 of herself and the minor children plaintiffs named in her third amended complaint.
22 Dkt. No. 28. Upon review of the record and applicable law, this Court denied
23 Murray’s motion for appointment of counsel, explaining that “[t]hrough her various

1 filings [Murray] has shown a basic grasp of court procedure and an ability to convey
 2 her thoughts in writing,” yet due to specific “material defects in her complaint,” “has
 3 not shown a likelihood of success on the merits of her claim.” Dkt. No. 34 at 10. The
 4 Court instructed Murray to amend her complaint so as to “replead[] her claims in
 5 short and plain terms with a focus on the factual, not legal, basis for her causes of
 6 action” and granted thirty days to comply. *Id.* The Court also dismissed the claims
 7 brought on behalf of Murray’s children without prejudice, explaining that non-
 8 attorneys generally may not represent others. *Id.* at 5 (citing *Johns v. Ctny. of San*
 9 *Diego*, 114 F.3d 874, 876 (9th Cir. 1997)).

10 On September 6, 2024, Murray filed this motion, seeking (1) reconsideration
 11 of this Court’s Order denying appointment of pro bono counsel; (2) recusal of this
 12 judge and reassignment of her case to a federal judge outside Washington State; (3)
 13 ex parte preliminary injunctive relief ordering, among other things, forensic
 14 interviews of Murray’s children and temporary placement of the children in
 15 Murray’s custody; and (4) permission to file a forensic report detailing abuse of one
 16 of Murray’s children under seal. Dkt. No. 35. The Court considers each of these
 17 requests in turn.

18 3. DISCUSSION

19 3.1 The Court reconsiders its prior ruling denying appointment of pro 20 bono counsel and refers this case to the District’s Pro Bono Panel for potential representation.

21 Murray asks the Court to reconsider its ruling denying her appointment of
 22 pro bono counsel. “Motions for reconsideration are disfavored,” LCR 7(h)(1), and
 23 “should not be granted, absent highly unusual circumstances, unless the district

1 court is presented with newly discovered evidence, committed clear error, or if there
2 is an intervening change in the controlling law.” *Marlyn Natraceuticals, Inc. v.*
3 *Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009). “Whether or not to
4 grant reconsideration is committed to the sound discretion of the court.” *Navajo*
5 *Nation v. Confederated Tribes & Bands of the Yakama Indian Nation*, 1041, 1046
6 (9th Cir. 2003).

7 Murray alleges a jumble of errors by the Court in its prior ruling, most of
8 which merit no discussion. But her claims about her disability status and its impact
9 on her ability to litigate in her own name require a closer look. In her motion,
10 Murray says that she has Post-Traumatic Stress Disorder (PTSD) symptoms,
11 including “vivid and distressing nightmares involving Cluster B assailants, which
12 force [her] to relive the traumas and physiological pain, [which] have severely
13 impacted [Murray’s] daily functioning.” Dkt. No. 35 at 13. She claims that her
14 condition causes her “to lose the ability to perform basic daily functions, let alone
15 engage in the complex and demanding process of amending a legal complaint.” *Id.*
16 at 14. She submitted two letters from her doctor in support of her motion, attesting
17 to “significant panic attacks, gastrointestinal distress, cognitive lapses and
18 difficulty understanding what is required when in court.” *Id.* at 30. And stating a
19 belief that Murray’s “mental health condition will be triggered and exacerbated
20 during the [legal] proceedings and as a result, temporarily will not have the
21 capacity to represent herself.” *Id.* at 31.

22 This newly submitted information supports a conclusion that Murray’s
23 physical and mental impairments, together with the complexity of the legal issues

involved, render her unable to adequately articulate her claims. *See Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (appointment of counsel under Section 1915 appropriate only in “exceptional circumstances”; whether “exceptional circumstances” exists “requires an evaluation of both ‘the likelihood of success on the merits [and] the ability of the petitioner to articulate his claims pro se in light of the complexity of the legal issues involved.’”) (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). Murray might present legitimate grievances meriting judicial redress. But the sprawling complexity and lack of factual clarity in her pleadings to date have hindered the Court’s assessment of her claims. Murray has been unable to articulate her claims pro se in a manner that facilitates a proper and efficient Section 1915 review. Accordingly, the Court GRANTS Murray’s motion for reconsideration and DIRECTS the District’s Coordinator of the Pro Bono Panel to try to identify an attorney(s) or law firm from the Pro Bono Panel to represent Murray for all further proceedings.

The Court notes, however, that it lacks authority to compel counsel to represent Murray. *See Mallard v. United States Dist. Court*, 490 U.S. 296, 298 (1989). Instead, the Court may only “request” counsel to serve. *See* 28 U.S.C. § 1915(e) (“The court may request an attorney to represent any person unable to afford counsel.”); *U.S. v. 30.64 Acres of Land*, 795 F.2d 796, 801 (9th Cir. 1986) (holding that Section 1915 permits a court to “request” counsel, not to compel representation). Nor may the Court appoint publicly funded counsel, such as the Federal Public Defender. “The Supreme Court has declared that ‘the expenditure of public funds [on behalf of an indigent litigant] is proper only when authorized by

1 Congress.” *Tedder v. Odel*, 890 F.2d 210, 211 (9th Cir. 1989) (citing *United States v.*
2 *MacCollom*, 426 U.S. 317, 321 (1976)). Congress has not provided funds to pay counsel
3 secured under 28 U.S.C. § 1915(e). *See 30.64 Acres of Land*, 795 F.2d at 801.

4 Thus, the Court cannot *guarantee* representation to Murray. The Court’s power,
5 on granting this motion to reconsider, is limited to making a *request* for representation
6 via the pro bono panel. Appointment will be contingent on the panel’s capacity to locate
7 counsel willing to voluntarily represent Murray pro bono. Likewise, this order should
8 not be interpreted as appointing counsel to Murray’s minor children. A minor child may
9 sue in federal court through an appointed representative, such as a general guardian.
10 Fed. R. Civ. P. 17(c)(1). Murray no longer has custody of her children and has not
11 petitioned the Court to represent their interest, so she does not possess the right to
12 make legal claims or demands—such as the appointment of counsel—on their behalf.

13 **3.2 The Court denies Murray’s request for recusal.**

14 The Court turns now to Murray’s recusal motion. Dkt. No. 35 at 22-23.
15 Noting that “judicial decisions in cases involving domestic violence and abuse can be
16 influenced by unconscious biases,” Murray asserts—without citing any particular
17 rulings—that “Judge Whitehead’s prior rulings appear to demonstrate a similar
18 bias, raising concerns about Plaintiffs’ ability to receive a fair trial.” *Id.* Along with
19 asking for recusal (and despite having earlier moved to transfer this case *from*
20 Oregon to Washington, *see* Dkt. No. 15), Murray also asks that “this case be
21 reassigned to a federal judge from outside Washington to mitigate concerns of bias
22 and ensure fairness in these proceedings.” Dkt. No. 35 at 23. Murray characterizes
23 this transfer request as being “in line with Judge Armstead of the District of

1 Oregon's suggestion," yet offers no insight or evidence about the alleged content or
2 context of Judge Armstead's so-called "suggestion." *See id.*

3 When a party moves to recuse under 28 U.S.C. § 144 or 28 U.S.C. § 455, "the
4 challenged judge will review the motion papers and decide whether to recuse
5 voluntarily." LCR 3(f). A federal judge must disqualify themselves from any
6 proceeding in which their "impartiality might reasonably be questioned." 28 U.S.C.
7 § 455(a). Recusal is also required when a party files a "timely and sufficient
8 affidavit that the judge before whom [their] matter is pending has a personal bias or
9 prejudice either against [them] or in favor of any adverse party," 28 U.S.C. § 144,
10 and the judge determines that recusal is appropriate, *United States v. Feldman*, 983
11 F.2d 144, 145 (9th Cir. 1992).

12 The standard for recusal under both statutes is the same: "Whether a
13 reasonable person with knowledge of all the facts would conclude that the judge's
14 impartiality might reasonably be questioned." *United States v. McTiernan*, 695 F.3d
15 882, 891 (9th Cir. 2012) (internal quote omitted). This reasonableness standard
16 matches Canon 3C(1) of the Code of Conduct for the United States Judges, which
17 requires that any basis for challenging a judge's impartiality must be "reasonable"
18 for the judge to be required to recuse. *See generally* Committee on Codes of Conduct
19 Advisory Opinion No. 103: Disqualification Based on Harassing Claims Against
20 Judge (June 2009). "The factors the judge should consider in making the
21 reasonableness determination [include]... the nature of the complaint, the
22 applicable law, and other relevant circumstances." *Id.*

1 Here, Murray has cited no grounds on which to question the impartiality of
2 the Court. If Murray intends her reference to “Judge Whitehead’s prior rulings” to
3 refer to this Court’s Order denying her motion for appointment of pro bono counsel,
4 then she falls far short of stating a valid basis for a finding of bias or partiality. “[A]
5 judge’s prior adverse ruling is not sufficient cause for recusal.” *United States v.*
6 *Studley*, 783 F.2d 934, 939 (9th Cir. 1986); *see also Liteky v. United States*, 510 U.S.
7 540, 555 (1994) (“[J]udicial rulings alone almost never constitute a valid basis for a
8 bias or partiality motion.”).

9 As such, this Court DENIES Murray’s motion for recusal and DIRECTS the
10 Clerk of Court to refer this matter to the Chief Judge for review. *See* LCR 3(f) (“If
11 the challenged judge decides not to voluntarily recuse, he or she will direct the clerk
12 to refer the motion to the chief judge, or the chief judge’s designee.”).

13 **3.3 The Court denies Murray’s ex parte motion for a Temporary** 14 **Restraining Order.**

15 The Court turns now to Murray’s motion for injunctive relief. Murray asks
16 the Court to (1) “[o]rder immediate forensic interviews of G.E.M. and C.M.M. by a
17 forensic team accredited by the National Childrens Alliance”; (2) “[p]rohibit the
18 involvement of Defendant Alexander Murray or any federal defendants in the
19 transportation or interaction with minor Plaintiffs during these interviews”; (3)
20 “[a]llow Plaintiff Sara Murray to seek necessary psychological and medical
21 assessments of the minor Plaintiffs in Oregon, where she resides”; (4) “[o]rder the
22 immediate and secure temporary placement of minor Plaintiffs G.E.M. and C.M.M.
23 with Plaintiff Sara Murray in Oregon without prior notice to the Defendants”; (5)

1 “[t]emporarily place minor Plaintiffs G.E.M. and C.M.M. with Plaintiff Sara Murray
2 in Oregon”; and (6) “[i]ssue an injunction prohibiting any retaliatory actions by the
3 Court, Defendants, or any associated parties against Plaintiff Sara Murray and her
4 children related to the filing of this Motion.” Dkt. No. 35 at 24-25. Because
5 Defendants have not yet been appeared in this case, the Court interprets Murray’s
6 application as seeking a Temporary Restraining Order (TRO), not a preliminary
7 injunction. *See* Fed. R. Civ. P. 65(a)(1) (“The court may issue a preliminary
8 injunction only on notice to the adverse party.”).

9 “Motions for temporary restraining orders without notice to and an
10 opportunity to be heard by the adverse party are disfavored and will rarely be
11 granted.” LCR 65(b). Under Rule 65 of the Federal Rules of Civil Procedure, the
12 court may issue a temporary restraining order without notice to the adverse party
13 only if (A) “specific facts in an affidavit or a verified complaint clearly show that
14 immediate and irreparable injury, loss, or damage will result to the movant before
15 the adverse party can be heard in opposition”; and (B) “the movant's attorney
16 certifies in writing any efforts made to give notice and the reasons why it should not
17 be required.” Fed. R. Civ. P. 65(b)(1). “The stringent restrictions imposed ... by Rule
18 65 on the availability of *ex parte* temporary restraining orders reflect the fact that
19 our entire jurisprudence runs counter to the notion of court action taken before
20 reasonable notice and an opportunity to be heard has been granted both sides of a
21 dispute.” *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Loc.*
22 *No. 70*, 415 U.S. 423, 438-439 (1974). In addition to the irreparable injury and
23 certification of notice requirements, courts also consider the likelihood of success on

1 the merits before issuing a TRO. *See N. Stevedoring & Handling Corp. v. ILWU*,
2 *Loc. No. 60*, 685 F.2d 344, 347 (9th Cir. 1982) (holding that temporary restraining
3 orders may be appealed under 28 U.S.C. § 1292(a)(1) because they “can be as
4 dispositive of the merits as a preliminary injunction.”).

5 Murray has not satisfied Rule 65’s procedural requirements for obtaining a
6 temporary restraining order. She has not filed an affidavit or verified complaint
7 showing the irreparable harm that will result from denial of immediate injunctive
8 relief. She has not certified in writing any attempts to give notice of the requested
9 relief to the adverse parties. Nor has she offered reasons why such notice should not
10 be required for any or all of the 37 defendants listed in her complaint. Further, and
11 just as decisively, Murray has yet to demonstrate a likelihood of success on the
12 merits. *See* Dkt. No. 34 at 10 (discussing deficiencies in the operative complaint).
13 Murray asks for federal court intervention into state family court proceedings, yet
14 meets none of the substantive or procedural requirements necessary to warrant
15 such extraordinary relief. As such, this Court DENIES Murray’s emergency motion
16 for preliminary injunctive relief.

17 **3.4 The Court denies Murray’s motion to file under seal.**

18 Finally, the Court turns to Murray’s motion for “permission to file the
19 forensic report detailing abuse of the minor Plaintiff, C.M.M., under seal.” Dkt. No.
20 35 at 26. Murray asserts that this forensic report “contains highly sensitive and
21 detailed information regarding the alleged abuse suffered by the minor, C.M.M.”
22 and that “[d]isclosure of this information in the public record could cause significant
23

1 harm to the minor’s privacy, emotional well-being, and development.” *Id.* Murray
2 further asserts that “[s]ealing the document is necessary to protect privacy and
3 prevent further harm or retaliation against Plaintiffs.” *Id.*

4 The Court will not reach the merits of Murray’s argument at this time. Under
5 Local Civil Rule 5(g)(3), a motion to seal a document must include a “certification
6 that the party has met and conferred with all other parties in an attempt to reach
7 agreement on the need to file the document under seal, to minimize the amount of
8 material filed under seal, and to explore redaction and other alternatives to filing
9 under seal[.]” Murray includes no such certification with her motion for permission
10 to seal. Nor *could* she, as Defendants have not been served with the Complaint and
11 therefore have not yet appeared in this litigation. As discussed above, “our entire
12 jurisprudence runs counter to the notion of court action taken before reasonable
13 notice and an opportunity to be heard has been granted both sides of a dispute.”
14 *Granny Goose Foods, Inc.*, 415 U.S. at 439 (1974). The proper time to raise this
15 motion for permission to file a sealed document would be after Defendants have
16 appeared, and the parties have met and conferred about the need to file the
17 document at-issue under seal.

18 Therefore, Murray’s motion to file the forensic report of C.M.M. under seal is
19 DENIED WITHOUT PREJUDICE.

20 4. CONCLUSION

21 In sum, the Court orders as follows:

22 4.1 The Court GRANTS Murray’s motion for reconsideration and
23 DIRECTS the District’s Coordinator of the Pro Bono Panel to try to

1 identify an attorney(s) or law firm from the Pro Bono Panel to
2 represent Murray. Consequently, the Court STRIKES the September
3 12 filing deadline for Murray's fourth amended complaint, *see* Dkt. No.
4 35, so that potential new counsel has time to work with Murray on
5 succinctly presenting her claims to the Court.

6 4.2 The Court DENIES Murray's motion to recuse Judge Whitehead and
7 DIRECTS the Clerk of Court to refer this matter to the Chief Judge for
8 review.

9 4.3 The Court DENIES Murray's motion for injunctive relief.

10 4.4 The Court DENIES without prejudice Murray's motion for permission
11 to file the named report under seal.

12 It is so ORDERED.

13 Dated this 11th day of September, 2024.

14
15 

16 Jamal N. Whitehead
17 United States District Judge
18
19
20
21
22
23